NOTES OF CASES.

Accident Insurance—Septic Poisoning from Use of Hypodermic Needle in Violation of Law.—In Townsend *v.* Commercial Travelers' Mutual Accident Association, 131 N. E. 871, the Court of Appeals of New York held that one insured under an accident policy who undertook to administer to himself morphine with a hypodermic needle which had been previously in his possession, though septic poisoning causing death resulted, cannot be deemed to have died as a result of violation of law, for the violation of the law was at most incidental.

The court said in part: "The death of the insured was not due to an unlawful possession of the hypodermic needle. The statute does not prohibit possession of such needles. It merely requires a certificate or license to possess the same. Under the facts of this case, the conclusion is inevitable that, had the insured been unlawfully in possession of the needle, his death would have resulted from septic poison due to one of two causes, unsterile condition of the needle, or of his skin or body. The argument that possession of the needle by the insured enabled him to use the same does not suffice to create a relation between the unlawful possession of the needle and the death of the insured. The absence of a certificate was not the cause of the accident. The injury would have resulted had a certificate or license been in possession of the insured. The evidence does not disclose that the needle was unsterile. The insured had been in possession of the needle for years, but such possession, however long continued, could not or did not cause septic poison which resulted in the death of the insured.

"Unlike the policy in this case, policies of insurance which contained provisions for nonliability of the insurer to an insured who was injured or killed 'while violating the law,' 'engaged in or in consequence of some unlawful act,' etc., as well as other cases involving violation of law, have been considered by the courts, an examination of which leads to the conclusion I have reached. Bradley *v.* Mutual Benefit Life Ins. Co., 45 N. Y., 422, 6 Am. Rep., 115; Carroll *v.* S. R. I. R. R. Co., 58 N. Y., 126, 17 Am. Rep., 221; Patz *v.* City of Cohoes, 89 N. Y., 219, 42 Am. Rep., 286; Hutton *v.* State Acct. Ins., Co., 186 Ill. App., 499; Kneedler *v.* Bankers' Acc. Assn., 188 Ill. App., 293; Fischer *v.* Midland Cas. Co., 189 Ill. App., 486; Insurance Co. *v.* Bennett, 90 Tenn., 256, 16 S. W., 723, 25 Am. St. Rep., 685; Jones *v.* U. S. Mut. Acc. Assn., 92 Iowa, 652, 61 N. W., 485; Prader *v.* Nat. M. Acc. Assn., 96 Iowa, 149, 63 N. W., 601; Supreme Lodge K. P. *v.* Beck, 181 U. S., 49, Sup. Ct., 532, 45 L. Ed., 741; Supreme Lodge K. P. *v.* Crenshaw, 129 Ga., 195, 58 S. E., 629, 13 L. R. A. (N. S.), 258, 121 Am. St. Rep., 216, 12 Ann. Cas., 307· Phenix Ins. Co. *v.* Clay, 101 Ga., 331, 28 S. E., 853, 65 Am. St. Rep.

307; Mechanics' Ins. Co. *v.* Hoover Distilling Co., 182 Fed., 590, 105 C. C. A., 128, 31 L. R. A. (N. S.), 873.

"That the death of the insured was due to accidental means is too well settled by this court to require discussion. Bailey *v.* Interstate Cas. Co., 8 App. Div., 127, 40 N. Y., Supp., 513, affirmed 158 N. Y., 723, 53 N. E., 1123; Marchi *v.* Aetna Life Ins. Co., 140 App. Div., 901, 125 N. Y. Supp., 1130, affirmed 205 N. Y., 606, 98 N. E., 1108; Lewis *v.* Ocean Acct. & G. Corp., 224 N. Y., 18, 120 N. E., 56, 7 A. L. R., 1129. * * * The Health Law was not intended to provide protection to insurance companies. The purpose of the statute was to prevent the constant use of any habit-forming drug, and to protect 'habitual drug users,' therefore, it cannot be said as matter of law that the insured was guilty of negligence. Kelley *v.* N. Y. State Railways, 207 N. Y., 342, 100 N. E., 1115; Di Caprio *v.* N. Y. C. R. R. Co., 231 N. Y., 94, 131 N. E., 746."

Animals—Liability of Owner for Death Caused by Mad Dog.—In Clinkenbeard *v.* Reinert, 225 S. W. 667, the Supreme Court of Missouri held that the owner of a vicious dog, knowing its vicious propensities, who failed to kill it, was liable for death of a child bitten by it, though she would not have died if the dog had not been rabid, and though the owner had no knowledge of such condition.

In disposing of the cases relied upon by the defendant the court said: "On the vital point in this case we are cited to some three cases, first among them being Elliott *v.* Herz, 29 Mich. 202. The opinion there was by Cooley, J., and concurred in by Campbell, J. Graves, C. J., dissented in an opinion filed, and Christiancy, J., did not sit. So the opinion is by two of the then four members of that court. In the opinion Judge Cooley does use this language:

" 'The injury from the bite of a rabid dog must be classed with those from inevitable accident, which the law always leaves to rest where they chance to fall, because, as no one was in fault, there is no basis for an assessment of damages against any one.'

"The dog in question was mad and killed and injured some sheep. The action was under a Michigan statute, which made the owner of a dog liable without proof that such owner had knowledge of the vicious propensities of the dog. Under that statute the learned judge writing the majority opinion said that the statute did not cover the madness of the dog. The dissenting opinion holds to the contra. The whole case turns upon the statute and the construction to be placed upon it. There was nothing in the case to show that there was a common-law duty to either kill or restrain this particular dog for months prior to the injury and the madness of the dog, as we have in this case. In this case the knowledge of the vicious